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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re OLIVER K., a Person Coming Under  
the Juvenile Court Law.

SAN DIEGO COUNTY HEALTH AND  
HUMAN SERVICES AGENCY,

Plaintiff and Respondent,

v.

TRAVIS B. et al.,

Defendants and Appellants.

D070357

(Super. Ct. No. J518921B)

APPEALS from an order of the Superior Court of San Diego County, Sharon  
Kalemkiarian, Judge. Affirmed.

Neil R. Trop, under appointment by the Court of Appeal, for Defendant and  
Appellant Travis B.

Cristina Gabrielidis, under appointment by the Court of Appeal, for Defendant and Appellant Kristin K.

Thomas E. Montgomery, County Counsel, John E. Philips, Chief Deputy County Counsel, and Kristen M. Ojeil, Deputy County Counsel, for Plaintiff and Respondent.

Travis B. and Kristin K. separately appeal an order under Welfare and Institutions Code section 366.26<sup>1</sup> selecting adoption as the permanent plan for their son Oliver K. and terminating their parental rights. They both contend there was insufficient evidence to support the court's finding that Oliver is adoptable. Kristin also contends the court erred in finding there was not a beneficial parent-child relationship between her and Oliver within the meaning of section 366.26, subdivision (c)(1)(B)(i), that precluded the termination of her parental rights. We affirm.

#### FACTUAL AND PROCEDURAL BACKGROUND

On September 14, 2105, the San Diego County child abuse hotline received a general neglect and emotional abuse referral reporting that Kristin delivered Oliver<sup>2</sup> on September 11 outside the hospital and was transported by ambulance to the hospital, where she spoke nonsensically and presented with disorganized thoughts. An investigation by the San Diego County Health and Human Services Agency (the Agency)

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<sup>1</sup> All further statutory references are to the Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> Kristin named Oliver in late November 2015, approximately two months after his birth. Before then he was known as Baby Boy K.

revealed that Kristin gave birth to Oliver on the cement patio at the maternal grandmother's residence. When emergency medical technicians arrived at the residence Oliver was still attached to Kristin by the umbilical cord. He was covered in dirt when he arrived at the hospital.

Kristin appeared psychotic when she was received at the hospital and was placed on a section 5150 hold<sup>3</sup> due to grave disability, including the inability to articulate a plan for food, clothing and shelter for herself. Hospital records showed Kristin had a history of section 5150 hospitalizations and a prior diagnosis of schizophrenia. She was not currently receiving any psychiatric services or treatment. Oliver was moved to a neonatal care unit because the hospital was concerned for his safety in light of Kristin's emotional and mental state. Kristin did not inquire about Oliver or acknowledge that she had given birth during her stay at the hospital. She told the Agency she did not want another baby and was considering signing adoption paperwork for Oliver. On September 14, 2105, a hospital hold was placed on Oliver and he was later detained in a confidential foster home.

When an Agency social worker interviewed Kristin at the hospital three days after Oliver's birth, Kristin's thoughts were disorganized and she was unable to focus. Regarding Oliver, Kristin stated, "I don't want another baby. I want my period." She told

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<sup>3</sup> Section 5150 allows peace officers and specified mental health professionals to take a person into custody if the peace officer or mental health professional has probable cause to believe the person is a danger to herself or others. Custody under section 5150 must be in a designated mental health facility and may not exceed 72 hours. The person who is in custody must be assessed by the facility prior to admission and, if admitted, evaluated under the direction of a mental health professional. (§§ 5151, 5152.)

the social worker she had a daughter named Dominique who was born in February 2009 and lived with her father, Shawn S., in Arizona. The maternal grandmother stated it could be true that Kristin had a daughter because Kristin was homeless for a long time. However, the maternal grandmother added, "I don't know if she's making the whole thing up."

Travis, who was unemployed and homeless, identified himself as Oliver's father. Kristin was also homeless. When she gave birth to Oliver she was living on the patio of the maternal grandmother's residence in violation of a restraining order the maternal grandmother had obtained against her. Travis reported Kristin was diagnosed with schizophrenia and had not been taking her prescribed medication before Oliver's birth. There were reports of a history of domestic violence between Travis and Kristin.

The maternal grandmother reported Kristin was diagnosed with schizophrenia around the age of 21 and it had been about two years since Kristin had taken any of her prescribed psychotropic medication. Kristin refused to take medication and get help because she did not think there was anything wrong with her. She had been in numerous hospitals and group homes over the past 10 years and had been kicked out of several group homes for violating rules and attempting to have Travis spend the night with her. On the day Oliver was born, the maternal grandmother observed an empty gin bottle in her home. The maternal grandmother described the bottle as a "giant bottle"—more than a quart—and thought Kristin may have drunk the gin. The maternal grandmother believed Kristin and Travis drank alcohol together, but stated Kristin did not drink too much.

The Agency filed a petition on behalf of Oliver under section 300, subdivision (b), on September 16, 2015, alleging there was a substantial risk he would suffer serious physical harm or illness by the parents' inability to care for him due to mental illness, developmental disability, or substance abuse. The petition alleged Kristin "had a mental illness, including, but not limited to, [her being] hospitalized pursuant to [section] 5150 with a diagnosis of [s]chizophrenia, paranoid type and psychotic features." The petition further alleged that Kristin had failed to reunify with an older sibling of Oliver due to her mental illness, and that Oliver's alleged father (Travis) was homeless and had been unable to care for Oliver's sibling.

Oliver's sibling referenced in the petition was A.B., born in March 2014. The Agency filed a petition on behalf of A.B. four days after he was born. Kristin reportedly was unaware that she was pregnant with A.B. and had used marijuana during the pregnancy. She was homeless and diagnosed with schizophrenia, chronic paranoid type, with acute exacerbation that rendered her unable to care for A.B. The juvenile court declared Travis to be A.B.'s presumed father. Travis was unable to care for A.B. because he was homeless. The juvenile court terminated the parents' reunification services in November 2014 and terminated parental rights to A.B. in April 2015.

In the present case, Travis told the Agency social worker he and Kristin had known each other for three years and he was the biological father of both Oliver and A.B. He denied any history of domestic violence between him and Kristin but admitted he had been arrested for domestic violence with the mother of one of his other children. The social worker asked Travis how he felt about Oliver. He stated, "It is cool. I am happy.

I want to see him." He told the social worker he would love it if the Agency gave him Oliver and "we could live a beautiful life."

At the time of the detention hearing, Kristin was still on a psychiatric hold. The court found a prima facie showing had been made on Oliver's petition and ordered Oliver detained and placed in an approved foster home. The court directed the Agency to provide voluntary services and allowed the parents liberal supervised visitation.

In its report for the jurisdiction/disposition hearing, the Agency recommended the court set a section 366.26 hearing without offering the parents reunification services. An Agency social worker interviewed Kristin on September 30, 2015, and reported that Kristin "was mixed between coherent and incoherent." Kristin told the social worker that Oliver's father was Shawn S., who lived in Tempe, Arizona, and that Shawn was also the father of her daughter Dominique and her son A.B. She said she raised Dominique at the maternal grandmother's home from birth to age five and then Shawn decided to take Dominique. The Agency reported that a search for Shawn conducted during A.B.'s dependency case found no records for him or Dominique. Prior Child Welfare Services records noted Kristin did not have a daughter and "suffers from delusions regarding this." Regarding her mental health, Kristin stated she was diagnosed with bipolar disorder and depression but did not think she was schizophrenic because she did not have hallucinations and delusions. She referred to schizophrenia as the "s" word and denied ever taking medication for it.

In an interview with an Agency social worker on September 29, 2015, Travis reported that he was homeless and stayed with friends and family from time to time. He

had four children other than Oliver and A.B. but had no relationship with any of them and did not know where they were living. He was using marijuana to self-treat his depression and ADHD (attention-deficit/hyperactivity disorder). He admitted to a history of substance abuse and when asked how old he was when he first tried alcohol, he responded, "I was born drunk." He had been in prison three times for sales of narcotics, drug possession and transportation, and domestic violence.

The Agency's assessment was that Oliver was in need of the court's protection until Kristin was able to demonstrate mental health stability. The Agency noted Kristin had made no progress in that regard for more than 10 years and her situation had declined severely since Oliver's birth. Both parents had a history of not following through on court-mandated reunification services and had not addressed their mental health issues, substance abuse, or homelessness.

At the jurisdiction/disposition hearing on November 13, 2105, Kristin's counsel requested a continuance because Kristin was still in a mental health treatment facility and was unable to attend the hearing. Travis's counsel joined in the request because Travis had not yet completed a paternity test, which the court ordered him to undergo in October. The court denied the request, finding it would be detrimental to Oliver to continue the case any further. The court sustained the petition and removed Oliver from Kristin's custody. Under section 361.5, subdivision (b)(10) and (11), the court denied reunification services to Kristin and set a section 366.26 hearing. (§ 361.5, subd. (f).) The court granted the parents reasonable supervised visitation but gave the Agency discretion to suspend Kristin's visitation if her mental state placed Oliver at risk.

In its report for the section 366.26 hearing filed in February 2016, the Agency noted Oliver was in good health and doing well. A genetics/dysmorphology specialist diagnosed Oliver with fetal alcohol exposure due to the circumstances of his birth. The specialist recommended Oliver be reevaluated in six months in the event circumstances changed. Oliver was eating and sleeping well with no concerns and was able to feed himself and roll over. He was not receiving any services and was not participating in therapy or taking psychotropic medication. He had been in his current foster home since November 1, 2015.

Travis had not participated in any formal visitation with Oliver. The Agency social worker who prepared the section 366.26 report supervised three visits between Kristin and Oliver at Kristin's residential treatment facility. During the first visit on January 5, 2016, Kristin appeared to be in a happy mood. She held Oliver throughout the visit and talked to the social worker about her older son A.B. The social worker occasionally redirected Kristin when Kristin became agitated.

At the second visit on January 19, 2016, Kristin told the social worker the maternal grandmother was on her way to the visit with Travis. The social worker responded that Kristin and Travis were not allowed to visit together because of previous issues they had during visits. When Travis and the maternal grandmother arrived, the maternal grandmother was allowed into the visit and Travis was told he could talk to the social worker after the visit. Kristin became agitated with the social worker and continued to ask questions about A.B. and his dependency case. The social worker and maternal grandmother explained this was a time for her to visit with Oliver. The social

worker was able to refocus Kristin but had to redirect her a few times. Kristin assisted Oliver with eating and held him for a while. The maternal grandmother held Oliver for the last 25 minutes of the visit.

During the third visit on February 2, 2016, Kristin initially engaged with Oliver, talking to him and showing him to staff members in the room. After 10 minutes she began to talk about filling out job applications and the dependency case, but the social worker redirected her and she was able to regain focus and engage with Oliver. Midway through the visit, the maternal grandmother and Travis arrived. The staff reminded Kristin they needed advance notice for Travis to appear at the facility. Kristin became agitated when Travis was not allowed into the visit, asserting he had taken his paternity test and should be allowed to visit. Kristin occasionally held Oliver during the visit, but the maternal grandmother had to instruct her to hold his head.

In the portion of the report assessing Oliver's adoptability, the social worker stated Oliver was a beautiful baby boy who was "described as a very cheerful baby, who is friendly towards others and can be observed smiling often. He is a very likeable child for his age." Oliver was specifically adoptable because his caregivers were interested in adopting him along with his older sibling A.B., and had already completed an adoptive home study. Oliver was also generally adoptable because seven homes in San Diego County had been identified that would be interested in adopting a child with his characteristics. The Agency recommended termination of parental rights and adoption as Oliver's permanent plan, stating "[t]he benefits of adoption outweigh any detriment as there is not a parent[-]child relationship that has formed with either parent."

The Agency filed an addendum report on April 28, 2016, recounting five additional visits between Kristin and Oliver at Kristin's residential treatment facility, and four visits between Travis and Oliver. Kristin held Oliver and engaged with him for portions of the visits, and the social worker occasionally redirected her to engage with him when she wanted to talk about his dependency case and A.B.'s dependency case. The maternal grandmother also held Oliver during the visits and assisted Kristin in holding him properly and changing his diaper.

During Travis's first two visits with Oliver, Oliver stayed in his car seat the entire visit. The visitation monitor encouraged Travis to take Oliver out of his car seat during the third visit, but Travis stated he did not want to. The social worker later observed the visitation monitor assisting Travis with feeding Oliver and holding him correctly. Travis reportedly was engaging and "loving" toward Oliver during his fourth visit. He assisted in putting Oliver in his car seat at the end of the visit.

The Agency's assessment was that although Kristin had made strides during her visits, she continued to have difficulty showing a parental role. She was easily distracted and often had to be reminded by the maternal grandmother and social worker how to hold Oliver properly and be redirected because she wanted to discuss the case during visits. Given the limited visitation allowed by her treatment facility, it was difficult for Kristin to establish a parent-child relationship. Oliver displayed no emotional reaction in leaving the visits. He welcomed strangers with a smile and remained engaged with them. The Agency concluded Kristin's relationship with Oliver was that of a friendly stranger.

Travis also struggled to demonstrate a parental role with Oliver. His inability to visit Oliver early in the case negatively impacted his ability to build a parent-child relationship. The Agency concluded there was no strength in Oliver's relationship with Travis and termination of parental rights would not be detrimental to Oliver.

An Agency addendum report filed on May 16, 2016, described a visit between Oliver and Kristin, the maternal grandmother, and a great-grandmother. While the maternal grandmother and great-grandmother assisted in feeding Oliver, Kristin spoke to the social worker about her options going forward, stating the maternal grandmother could take care of Oliver while she (Kristin) looked for work and attempted to get out of her treatment facility. The social worker noticed Kristin was becoming agitated, so he redirected her to continue with the visit and call him outside visitation time if she had questions. Kristin then engaged with Oliver, took photos of him, and tended to his needs by changing his diaper before he left to visit Travis. Oliver showed no emotional distress in leaving the visit and being transported to his visit with Travis.

Travis visited Oliver on May 12. When the social worker arrived at the visit, Oliver was sitting on Travis's lap and Travis was feeding him dry cereal. During the next 15 minutes, Travis engaged with Oliver and continued to feed him cereal. Oliver showed no emotional distress when the visit ended and he was transported back to the caregiver's home.

The court held a contested 366.26 hearing on May 18, 2016, and received in evidence the Agency's report for the hearing and two subsequent addendum reports. The court also received stipulated testimony from Kristin in the form of a written statement,

which her counsel read into the record. Kristin stated her visitation with Oliver over the preceding six to eight months had been a blessing to her and had "brought joy and love, kindness and tenderness into [her] heart and soul." She noted Oliver's progress and stated: "I've brought him milk, diapers, clothing, teething rings. And I'm ready to provide for the child beyond his 18 years of age. I love him very much . . . . The visits that my mom and I do have and have been provided with every other week, we have shown bonding. [¶] She wants to keep him. She's willing to be there for the child every step of the way. As us parents have shown commitment towards seeing the child weekly, we have been faithful in plans to reunify with the child. We share a special connection with the child."

After hearing argument from counsel, the court found by clear and convincing evidence that it was likely Oliver would be adopted and that none of the exceptions set forth in section 366.26, subdivision (c)(1)(B) applied. The court selected adoption as Oliver's permanent plan, terminated parental rights, and referred Oliver to the Agency for adoptive placement. The court designated Oliver's caregivers as the prospective adoptive parents.

## DISCUSSION

### *I. Adoptability*

Kristin and Travis contend there was insufficient evidence to support the court's finding that Oliver is adoptable. They both complain that the Agency's assessment report for the section 366.26 hearing did not meet the requirements of section 366.21, subdivision (i), because it did not provide an adequate analysis regarding Oliver's

potential developmental problems from fetal alcohol exposure,<sup>4</sup> and there was no other evidence that prospective adoptive parents were provided information about Oliver's fetal alcohol exposure.<sup>5</sup> We conclude there was sufficient evidence to support the court's finding that Oliver was likely to be adopted.

" 'The juvenile court may terminate parental rights only if it determines by clear and convincing evidence that it is likely the child will be adopted within a reasonable time. [Citations.] In making this determination, the juvenile court must focus on the child, and whether the child's age, physical condition, and emotional state may make it difficult to find an adoptive family. [Citations.] In reviewing the juvenile court's order, we determine whether the record contains substantial evidence from which a reasonable trier of fact could find clear and convincing evidence that [the child] was likely to be adopted within a reasonable time. [Citations.]' [Citations.] We give the court's finding of adoptability the benefit of every reasonable inference and resolve any evidentiary conflicts in favor of affirming. [Citation.]"

"A child's young age, good physical and emotional health, intellectual growth and ability to develop interpersonal relationships are all attributes indicating adoptability.

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<sup>4</sup> To the extent Kristin and Travis are challenging the adequacy of the Agency's adoptability assessment in its report for the section 366.26 hearing, they have waived the issue by failing to challenge the adequacy of the assessment report in the trial court. In *In re Crystal J.* (1993) 12 Cal.App.4th 407, 411-412, this court held that failure to object below to the sufficiency of an assessment report waives the right to raise the issue on appeal. (Accord, *In re Aaron B.* (1996) 46 Cal.App.4th 843, 846.)

<sup>5</sup> Kristin also complains that the assessment report failed to address Oliver's genetic risk for schizophrenia. However, there is no evidence in the record that Oliver had a genetic risk for schizophrenia.

[Citation.] ' "Usually, the fact that a prospective adoptive parent has expressed interest in adopting the minor is evidence that the minor's age, physical condition, mental state, and other matters relating to the child are not likely to dissuade individuals from adopting the minor. In other words, a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family." ' " (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1561-1562.) However, the likelihood of adoptability may also be satisfied by a showing that a child is generally adoptable, independent of whether there is a prospective adoptive family. (*In re A.A.* (2008) 167 Cal.App.4th 1292, 1313.)

The evidence sufficiently supports the court's finding by clear and convincing evidence that Oliver was likely to be adopted. As noted, in its initial report prepared for the section 366.26 hearing, the Agency concluded Oliver was both specifically and generally adoptable and described him as a beautiful and cheerful baby boy who smiled often and was friendly towards others. The Agency concluded Oliver was specifically adoptable because his caregivers were interested in adopting him and his older sibling A.B., and the caregivers had completed an adoptive home study. The Agency concluded Oliver was generally adoptable because it had identified seven homes in San Diego County that would be interested in adopting a child with his characteristics. At the section 366.26 hearing, the court expressly based its finding that Oliver was adoptable on the adoptability assessment in the Agency's report. The court was entitled to find the Agency's opinion credible, and to give great weight to its assessment. (See *In re Casey D.* (1999) 70 Cal.App.4th 38, 53.)

Kristin and Travis note that after finding Oliver was adoptable at the section 366.26 hearing, the court stated, "Now that's important because [Oliver] is going to have special needs. The fetal alcohol syndrome, the impact of it now is much less when they're infants than [it is] when they get older. [¶] Hopefully, for his sake, the impact will be mild, but there is some impact almost always in the way they think, in their emotional development." The court later added, "So it is a very serious thing that he has the fetal alcohol syndrome. And the doctors will be watching it, but despite that, he is adoptable and he looks to be a beautiful baby."

As noted above, a genetics/dysmorphology specialist diagnosed Oliver with fetal alcohol *exposure* due to the circumstances of his birth, not fetal alcohol *syndrome*. The court's oral statements indicate that it misconstrued or misremembered Oliver's diagnosis as being fetal alcohol *syndrome*. Presumably, the "circumstances of [Oliver 's] birth" forming the basis of the fetal alcohol *exposure* diagnosis were the maternal grandmother's report that she saw an empty gin bottle in her home the day Oliver was born and her statement that she believed Kristin and Travis drank alcohol together, although Kristin "did not drink too much." The diagnosis reflects the specialist's recognition that because Oliver may have been exposed to alcohol in utero to an extent that could pose a risk to his well-being, he should be periodically evaluated to determine whether he was in fact suffering effects of alcohol exposure. The court weighed the *possibility* that Oliver might have developmental problems in the future due to alcohol exposure against the present *actuality* that he was a generally happy, cheerful baby who was eating and sleeping well with no present developmental concerns or need for services or medication, and

reasonably concluded Oliver was likely to be adopted notwithstanding the possibility he might have future problems from prenatal alcohol exposure.

Kristin and Travis contend the court's adoptability finding was erroneous because there was no evidence the prospective adoptive parents had been informed about Oliver's diagnosis of fetal alcohol exposure. However, the court could reasonably infer from the entire record that the prospective adoptive parents were aware of Oliver's diagnosis. The Agency's report noting the diagnosis was filed in February 2016, and Oliver had been with his current caregivers and prospective adoptive parents since November 1, 2015. The Agency's previous report was filed on October 29, 2015. The court could reasonably infer from the timing of the reports that Oliver was diagnosed with fetal alcohol exposure after he had been placed with his prospective adoptive parents. In any event, the court could reasonably infer that Oliver's caregivers would have been made aware of the medical directive that Oliver be reevaluated for fetal alcohol exposure in six months and thus were necessarily aware he had been diagnosed with fetal alcohol exposure. Oliver's diagnoses of fetal alcohol exposure did not preclude the court from finding he was likely to be adopted if parental rights were terminated.

The evidence that Oliver was a beautiful, cheerful, sociable baby, that there were seven families in San Diego County willing to adopt a child with his characteristics, and that his current caregivers were willing to adopt him and had completed an adoptive home study sufficiently supports the court's finding by clear and convincing evidence that Oliver was likely to be adopted within a reasonable time.

## *II. Beneficial Parent-Child Relationship Exception*

Kristin contends that the court erred in finding that the beneficial parent-child relationship exception of section 366.26, subdivision (c)(1)(B)(i), did not apply to preclude the termination of her parental rights. " 'At a permanency plan hearing, the court may order one of three alternatives: adoption, guardianship or long-term foster care. [Citation.] If the dependent child is adoptable, there is a strong preference for adoption over the alternative permanency plans.' [Citation.] 'Once the court determines the child is likely to be adopted, the burden shifts to the parent to show that termination of parental rights would be detrimental to the child under one of the exceptions listed in section 366.26, subdivision (c)(1). [Citations.] Section 366.26, subdivision (c)(1)(B)(i), provides an exception to termination of parental rights when "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." ' " (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1165.)

This court has interpreted "the 'benefit from continuing the [parent[-]child] relationship' exception to mean the relationship promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent[-]child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent's rights are not terminated." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575 (*Autumn H.*))

"A parent asserting the parental benefit exception has the burden of establishing that exception by a preponderance of the evidence. [Citation.] It is not enough to show that the parent and child have a friendly and loving relationship. [Citation.] ' "Interaction between [a] natural parent and child will always confer some incidental benefit to the child . . . ." ' [Citation.] For the exception to apply, 'a *parental* relationship is necessary[.]' [Citation.] ' "While friendships are important, a child needs at least one parent. Where a biological parent . . . is incapable of functioning in that role, the child should be given every opportunity to bond with an individual who will assume the role of a parent." ' " (*In re J.C.* (2014) 226 Cal.App.4th 503, 529 (*J.C.*)).

Appellate courts have applied different standards of review to the parent-child beneficial relationship exception. (See *In re K.P.* (2012) 203 Cal.App.4th 614, 621.) Most courts initially applied the substantial evidence standard. (See *ibid.*; *J.C.*, *supra*, 226 Cal.App.4th at p. 530.) However, this court has applied a "hybrid standard," under which "[w]e apply the substantial evidence standard of review to the factual issue of the existence of a beneficial parental relationship, and the abuse of discretion standard to the determination of whether there is a compelling reason for finding that termination would be detrimental to the child." (*In re Anthony B.* (2015) 239 Cal.App.4th 389, 395.)<sup>6</sup> We will apply the hybrid standard.<sup>7</sup>

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<sup>6</sup> Division Three of this District also recently applied the hybrid standard. (See *J.C.*, *supra*, 226 Cal.App.4th at p. 531.)

<sup>7</sup> As a practical matter, the analysis is essentially the same under either standard of review. As noted above, " '[e]valuating the factual basis for an exercise of discretion is

We conclude Kristin has not met her burden of establishing the beneficial parent-child relationship exception to adoption. At the section 366.26 hearing, the court pointed out that for that exception to apply, the court would have to find there was such a strong parent-child bond between Oliver and Kristin that it would be more detrimental to Oliver to not have that parent-child relationship than to have a permanent home with adoptive parents. Although the court commended Kristin for visiting Oliver and making an effort to engage with him at the visits, the court found Kristin did not have "that kind of bond with [Oliver] from his perspective that is so strong that [termination of parental rights] would be worse for him than to allow him to be adopted." The court noted Oliver "turns to his caregivers on a day-to-day basis to care for him[.] . . . [H]e turns to his caregivers right now, every day, for feeding, for clothing."

The evidence supports the court's determination that there was not a beneficial parent-child relationship between Kristin and Oliver that precluded termination of her parental rights. The Agency reported that Kristin's mental health had "impeded her ability to properly visit and build a quality relationship with [Oliver]." Kristin had only nine visits with Oliver and all of them took place at her residential treatment facility. Although she was able to engage with Oliver during visits, she became agitated and was easily distracted, and repeatedly had to be redirected to focus on Oliver. Oliver separated

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similar to analyzing the sufficiency of the evidence for the ruling. . . . Broad deference must be shown to the trial judge. The reviewing court should interfere only " 'if [it] find[s] that under all the evidence, viewed most favorably in support of the trial court's action, no judge could reasonably have made the order [under review].' . . . " ' " (*In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351.)

easily from Kristin at the end of visits with no emotional reaction. The Agency concluded Kristin's relationship with Oliver was that of a friendly stranger.

As noted, to overcome the preference for adoption and preclude termination of parental rights at a permanency plan hearing, the evidence must support a finding that "severing the natural parent[-]child relationship would deprive the child of a substantial, positive emotional attachment such that *the child would be greatly harmed . . .*" (*Autumn H., supra*, 27 Cal.App.4th at p. 575, italics added.) Although Kristin argues Oliver would benefit from continuing a parent-child relationship with her, she does not cite any evidence in the record that Oliver would be greatly harmed by the termination of her parental rights. She acknowledges in her opening brief that she is in no position to care for Oliver, and that it would not be in Oliver's best interest to live with her, but she argues that a permanent plan of guardianship or long-term foster care would allow Oliver to maintain his relationship "of positive significance" with her.

A relationship of "positive significance" between a dependent child and a natural parent is insufficient to overcome the preference for adoption as the child's permanent plan absent evidence that the relationship is a truly *parental* and the child will suffer great harm if the relationship is terminated. As noted, "[i]t is not enough to show that the parent and child have a friendly and loving relationship. . . . For the [beneficial relationship] exception to apply, 'a *parental* relationship is necessary[.]' " (*J.C., supra*, 226 Cal.App.4th at p. 529.) There is no evidence in the record compelling a finding that Kristin had the type of parental relationship with Oliver that could overcome the preference for adoption. Even assuming the evidence showed a parent-child relationship

between Kristin and Oliver that provided some benefit to Oliver, we conclude the court reasonably found the benefits of adoption greatly outweighed any detriment that severance of that relationship might cause Oliver. Accordingly, the court did not abuse its discretion in determining Kristin did not have a beneficial parent-child relationship with Oliver within the meaning of section 366.26, subdivision (c)(1)(B)(i), that precluded the termination of parental rights.

#### DISPOSITION

The order terminating parental rights and selecting adoption as the permanent plan for Oliver is affirmed.

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BENKE, Acting P. J.

WE CONCUR:

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NARES, J.

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O'ROURKE, J.